

**WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD  
CHARLESTON, WEST VIRGINIA**

**WEST VIRGINIA BUILDERS SUPPLY  
ASSOCIATION,**

**Appellant,**

**v.**

**Appeal No. 19-13-EQB**

**DIRECTOR, DIVISIONS OF WATER  
AND WASTE MANAGEMENT,  
WEST VIRGINIA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION,**

**Appellee.**

**ORDER APPROVING PROPOSED ORDER RESOLVING APPEAL**

On January 10, 2020, Appellant West Virginia Builders Supply Association ("Appellant") and Appellee West Virginia Department of Environmental Protection ("WVDEP") submitted to the Environmental Quality Board (the "Board") for consideration a proposed Order Resolving Appeal encompassing the issues raised in Appellant's Notice of Appeal dated October 11, 2019. (See attached Proposed Order Resolving Appeal).

Upon review of the documents and pleadings in this matter, the Board concludes that the agreements set forth in the proposed Order Resolving Appeal are reasonable and therefore approves of the agreements. The Board directs that WV/NPDES Permit No. WV0111457 ("the Permit") be revised in the manner described in the Order Resolving Appeal, with the revisions to be considered conditions of the Permit from the effective date of the Permit.

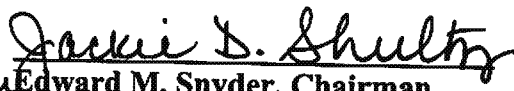
The Board takes such action in accordance with W. Va. Code R. § 46-4-5.2, in that the Board may, in its administrative discretion, and in the interests of fairness and justice, rule on

motions which tend to regulate the course of hearing, simplify the issues, and dispose of procedural requests or similar matters.

Please note the Board did take into consideration the sampling for compliance concerns raised by Jefferson County Foundation ("JCF") *et al.*, in JCF's Motion to Intervene that was received by the Board on December 5, 2019.

The Board dismisses the appeal from the docket.

**ORDERED** and **ENTERED** this 30<sup>th</sup> day of January, 2020.

  
for Edward M. Snyder, Chairman  
Environmental Quality Board

West Virginia Environmental Quality Board  
Charleston, West Virginia

West Virginia Building Supply Association,

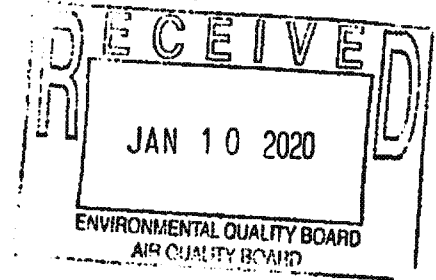
Appellant,

v.

Appeal No. 19-13-EQB

Director, Division of Water and Waste Management,  
West Virginia Department of Environmental  
Protection,

Appellee.



**Order Resolving Appeal**

On October 11, 2019, Appellant West Virginia Building Supply Association ("WVBSA") filed a Notice of Appeal challenging certain conditions of WV/NPDES Permit No. WV0111457 ("the Permit"), issued by Appellee ("DEP") on September 12, 2019 and effective October 12, 2019. The WVBSA and the DEP have conferred and have reached agreement on all issues raised in the WVBSA's Notice of Appeal, as set forth below:

**Item 1:** The text in Section B.13 of the Permit should be deleted, and replaced with the following:

**13. Water Quality Standards**

This discharge shall not cause or materially contribute to: distinctly visible floating or settleable solids, suspended solids, scum, foam or oily slicks; deposits or sludge bank on the bottom; odors in the vicinity of the waters; taste or odor that would adversely affect the designated uses of the affected waters; distinctly visible color which may impair or interfere with the designated uses of the affected waters; and shall not cause a fish or mussel kill. The limitations and conditions in this permit for the discharges identified in this permit are limitations and conditions that are necessary to meet applicable West Virginia water quality standards, Requirements Governing Water Quality Standards 47 CSR 2.

**Item 2:** The text in Section B.2 of the permit should be deleted, and replaced with the following:

**2. Allowable Non-Stormwater Discharges for all Sectors of Industrial Activity:**

The following are non-stormwater discharges that are authorized under this permit for all sectors provided that all discharges comply with the requirements of this Permit:

- Discharges from emergency/unplanned fire-fighting activities;
- Fire hydrant flushings;
- Potable water, including water line flushings;
- Uncontaminated condensate from air conditioners, coolers/chillers, and other compressors and from the outside storage of refrigerated gases or liquids;
- Irrigation drainage;
- Landscape watering provided all pesticides, herbicides, and fertilizers have been applied in accordance with the approved labeling;
- Pavement wash waters where no detergents or hazardous cleaning products are used (e.g., bleach, hydrofluoric acid, muriatic acid, sodium hydroxide, nonylphenols), and the wash waters do not come into contact with oil and grease deposits, sources of pollutants associated with industrial activities, or any other toxic or hazardous materials, unless residues are first cleaned up using dry clean-up methods (e.g., applying absorbent materials and sweeping, using hydrophobic mops/rags) and you have implemented appropriate control measures to minimize discharges of mobilized solids and other pollutants (e.g., filtration, detention; settlement);
- Routine external building washdown/power wash water that does not use detergents or hazardous cleaning products (e.g., those containing bleach, hydrofluoric acid, muriatic acid, sodium hydroxide, nonylphenols);
- Uncontaminated ground water or spring water;
- Foundation or footing drains where flows are not contaminated with process materials; and
- Incidental windblown mist from cooling towers that collects on rooftops or adjacent portions of your facility, but not intentional discharges from the cooling tower (e.g., "piped" cooling tower blowdown; drains).

**Item 3:** The parties agree that the period during which sampling for compliance with benchmarks is conducted should be changed, throughout the permit, from "1/3 Months" to "Quarterly". The intent of the parties is that sampling would be done once during each calendar quarter (January through March, April through June, July through September and October through December) if

there is a qualifying storm event, with reports of the results of sampling events due by the 25<sup>th</sup> day of the month following the quarter in which sampling occurred.


**Item 4:** The parties agree that the DEP's Response to Comments (Response 20) did not imply that two consecutive exceedances of benchmarks obligates a permittee to apply for an individual NPDES permit. If the average of two consecutive samples is above the benchmark level for a sample parameter a permittee is obligated to modify its Stormwater Pollution Prevention Plan, as provided in Section B.6 of the Permit.

The Board, having considered the agreements of the parties, and concluding that they are reasonable, adopts those agreements as its own and ORDERS that the Permit be revised in the manner described herein, with the revisions to be considered conditions of the Permit from the effective date of the Permit, and dismisses the appeal.

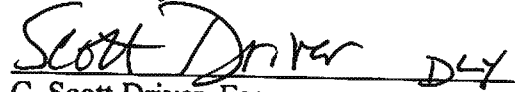
Entered this \_\_\_\_ day of January, 2020.

\_\_\_\_\_  
Dr. Edward Snyder, Chairman

Prepared by:

  
David L. Yaussy, Esq. (WV Bar # 4136)  
Spilman Thomas & Battle, PLLC  
300 Kanawha Blvd., E. (PO Box 273)  
Charleston, WV 25301 (25321)  
304-340-3829

Inspected by:

  
C. Scott Driver, Esq.  
Office of Legal Services  
West Virginia Department of Environmental Protection  
601 57th Street, SE  
Charleston, WV 25304

West Virginia Environmental Quality Board  
Charleston, West Virginia

West Virginia Building Supply Association,

Appellant,

v.

Appeal No. 19-13-EQB

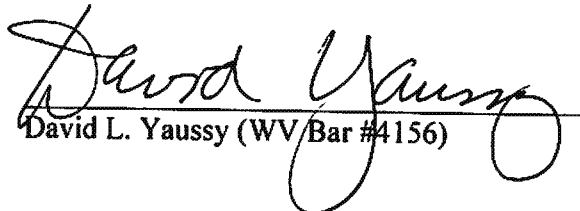
Director, Division of Water and Waste Management,  
West Virginia Department of Environmental  
Protection,

Appellee.

CERTIFICATE OF SERVICE

I, David Yaussy, counsel for West Virginia Building Supply Association, do hereby certify that I have filed an original and six copies of the foregoing proposed **Order Resolving Appeal** with the Environmental Quality Board at 601 57<sup>th</sup> Street, S.E., Charleston, WV 25304, and have served true and exact copies of the same upon counsel for the Appellee by first class mail on January 6, 2020, to the following:

C. Scott Driver, Esq.  
Office of Legal Services  
West Virginia Department of Environmental Protection  
601 57th Street, SE  
Charleston, WV 25304

  
David L. Yaussy (WV Bar #4156)

**WEST VIRGINIA ENVIRONMENTAL QUALITY BOARD  
CHARLESTON, WEST VIRGINIA**

**WEST VIRGINIA BUILDERS SUPPLY  
ASSOCIATION,**

**Appellant,**

**v.**

**Appeal No. 19-13-EQB**

**DIRECTOR, DIVISIONS OF WATER  
AND WASTE MANAGEMENT,  
WEST VIRGINIA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION,**

**Appellee.**

**ORDER DENYING MOTION TO INTERVENE AS BEING MOOT**

On December 4, 2019, Jefferson County Foundation (“JCF”) and others filed a motion to intervene in the above-styled appeal. On January 10, 2020, Appellant West Virginia Builders Supply Association (“Appellant”) and Appellee West Virginia Department of Environmental Protection (“WVDEP”) submitted to the Environmental Quality Board (the “Board”) for consideration a proposed Order Resolving Appeal encompassing the issues raised in Appellant’s Notice of Appeal dated October 11, 2019. The Board has approved of the agreements set forth in the proposed Order Resolving Appeal and has directed that WV/NPDES Permit No. WV0111457 (“the Permit”) be revised in the manner described in the Order Resolving Appeal, with the revisions to be considered conditions of the Permit from the effective date of the Permit. (See attached Order Resolving Appeal).

Accordingly, the Board considers JCF’s effort to intervene in this appeal moot, and therefore JCF’s Motion to Intervene is denied.

The Board takes such action in accordance with W. Va. Code R. § 46-4-5.2, in that the Board may, in its administrative discretion, and in the interests of fairness and justice, rule on motions which tend to regulate the course of hearing, simplify the issues, and dispose of procedural requests or similar matters.

**ORDERED** and **ENTERED** this 30th day of January, 2020.

*for Jackie S. Shultz*  
Edward M. Snyder, Chairman  
Environmental Quality Board



ENVIRONMENTAL QUALITY BOARD

**BUILDERS SUPPLY ASSOCIATION  
OF WEST VIRGINIA,**

**Appellant,**

**v.**

**Appeal No. 19-13-EQB**

**DIRECTOR, DIVISION OF WATER  
AND WASTE MANAGEMENT, WEST  
VIRGINIA DEPARTMENT OF  
ENVIRONMENTAL PROTECTION,**

**Appellee.**

**CERTIFICATE OF SERVICE**

I hereby certify that I, Jackie D. Shultz, Clerk for the Environmental Quality Board, have this day, the 30th day of January, 2020, served a true copy of the foregoing **Order Approving Proposed Order Resolving Appeal and Order Denying Motion To Intervene As Being Moot** via certified U.S. first class mail or hand delivery to the following:

*via certified U.S. Mail:*

David L. Yaussy, Esquire  
Spilman Thomas & Battle, PLLC  
300 Kanawha Blvd, E.  
Charleston, WV 25301

*Certified Mail:* 9489 0090 0027 6201 3799 58

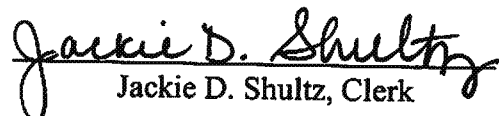
Christopher P. Stroeck, Esquire  
Arnold & Bailey, PLLC  
208 N. George Street  
Charles Town, WV 25414

*Certified Mail:* 9489 0090 0027 6201 3799 65

*via personal service:*

Charles S. Driver, Esquire  
Office of Legal Services  
WV Department of Environmental Protection  
601 57<sup>th</sup> Street, S.E.  
Charleston, WV 25304

Katheryn Emery, P.E., Acting Director  
Division of Water and Waste Management  
WV Department of Environmental Protection  
601 57<sup>th</sup> Street, S.E.  
Charleston, WV 25304

  
Jackie D. Shultz, Clerk